

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION)) MDL NO. 1456) Civil Action No. 01-12257-PBS) Subcategory No. 03-10643
THIS DOCUMENT RELATES TO:)) Judge Patti B. Saris
<i>The City of New York, et al.</i>))
v.)
<i>Abbott Laboratories, Inc., et al.</i>)

**FEBRUARY 2010 STATUS REPORT ON BEHALF OF
THE CITY OF NEW YORK AND NEW YORK COUNTIES**

The undersigned counsel for the City of New York and New York Counties in the above-captioned action (hereinafter referred to as “plaintiffs”) hereby submit the attached Status Report for February 2010, in accordance with the Court’s June 17, 2004 Procedural Order.

Dated: February 1, 2010

Respectfully submitted,

**City of New York and New York Counties in
MDL 1456 except Nassau and Orange, by**

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**February 2010 Status Report on Behalf of the
City of New York and New York Counties**

FUL Summary Judgment Briefing

On January 27, 2009 the Court entered an order granting plaintiffs' motion for partial summary judgment on FUL issues and denying defendants' joint motion for summary judgment on plaintiffs' "FUL Fraud" claims. *See* Docket No. 6863; Sub-docket 198.

Voluntary Dismissal of Claims

On January 9, 2010 plaintiffs voluntarily dismissed defendant Ethex. *See* Notice of Voluntary Dismissal [Docket No. 6822; Sub-docket 195].

Discovery

1. Motion to Compel Discovery from Defendant Merck

On September 4, 2009, plaintiffs filed their Motion to Compel Discovery from Defendant Merck for all at-issue drugs with annual AMP/AWP spreads over 30 percent. *See* Docket. No. 6487; Sub-docket. No. 158.

On October 5, 2009, Merck filed its opposition to plaintiffs' motion to compel. *See* Docket No. 6572, Sub-docket No. 168.

On October 23, 2009, plaintiffs filed their Motion for Leave to File Reply Memorandum in Further Support of Plaintiffs' Motion to Compel Discovery from Defendant Merck & Co., Inc., and Exhibits to the Declaration of Joanne M. Cicala in Support Thereof Under Seal. *See* Docket No. 6609, Sub-docket No. 175. This motion remains *sub-judice*.

2. Schering's Motion for a Protective Order

Given the Court's denial of GSK's motion for partial summary judgment [Docket No. 6735], plaintiffs presently will file their motion to lift the Schering Protective Order.

3. Discovery from the New York State Department of Health (“NY DOH”)

(a) The Fed.R.Civ. P. 30(b)(1) deposition of Mark-Richard Butt began on January 26, 2010, and will reconvene on February 8, 2010.

(b) The NY DOH completed its document production in response to defendants’ subpoena on January 5, 2010.

(c) On December 23, 2009, defendants filed a motion to compel production of all documents which NY DOH has withheld on the basis of the deliberative process privilege. *See* Docket No. 6810, Sub-docket No. 191. On January 20, 2010, the office of the New York Attorney General filed its Opposition to Defendants’ Joint Motion to Compel the Production of Documents from NY DOH. *See* Docket No. 6852; Sub-docket 197.

CERTIFICATE OF SERVICE

I, Kathryn Allen, hereby certify that on the 1st day of February, 2010, I caused a true and correct copy of the above February 2010 Status Report for the City of New York and New York Counties to be delivered to counsel of record for defendants by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL No. 1456.

Dated: February 1, 2010

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